HIGH COURT OF UTTARANCHAL AT NAINTIAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 1803 of 2002 (S/B)

Rukmeshwar Prasad Surira

Vs.

State of U.A. & others

Approved for reporting

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Not approved for reporting

Date of decision 17.6.2005

Initial of Judge

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1803 of 2002 (S/B)

Rukmeshwar Prasad Surira
S/o Late Shri G.P. Surira
At present working as Assistant
Teacher in LT Grade (General)
Sanatan Dharam Intermediate College,
Bannu, Race Course, Dehradun
District Dehradun …… Petitioner

Versus

State of Uttaranchal & others
…….. Respondents

Ms. Rakesh Thapliyal, learned counsel for the petitioner.
Mr. Harendra Belwal, learned Brief Holder for the State.

Hon'ble Rajesh Tandon, J.

Heard Mr. Rakesh Thapliyal, learned counsel for the petitioner and Mr. Harendra Belwal, learned Brief Holder for the State.

2) By means of present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to treat him to be absorbed in LT Grade w.e.f. 24.05.1989 in place of 24.05.1994 with all consequential befits.

2) Although time was granted to the Standing Counsel on 17th December, 2002 to file the counter affidavit within a period of 15 days but no counter affidavit has been filed so far and, as such both the parties agree that let the writ petition be heard finally.

3) Briefly stated, the petitioner was initially appointed as Assistant Teacher in the Institution recognized by Basic Shiksha Parishad on 9th February, 1978 and subsequently the approval was granted for the said appointment. On 24th May 1984, the petitioner was absorbed in C.T. Grade and subsequently by means of an order dated 12th July 1995 the petitioner was given L.T. Grade w.e.f. 24.05.1994 after completion of ten years continuous service in C.T. Grade. Learned counsel for the petitioner has submitted that although the L.T. Grade was given to the petitioner on completion of ten years of services in C.T. Grade on 24.05.1994 but since C.T. Grade has already been declared as a dying cadre in the year 1989, the petitioner should have automatically been treated to be in the L.T. Grade in 1989 instead of treating him in L.T. Grade in the year 1994. In support of this, the petitioner has referred a Government Order dated 3rd June 1989 by which the C.T. Grade has now been declared a dying cadre and those who have completed 10 years continuous service in C.T. Grade were automatically treated to be in L.T. Grade. Learned counsel for the petitioner has referred a judgment passed by Hon'bel Allahabad High Court in the case of Santosh Kumar Singh Vs. District Inspector of Schools, Meerut and others reported in (1996) 2 UPLBEC 1166, which is quoted as under:

> ***"The petitioner was appointed as C.T. grade teacher on 1.12.1984 in Gandhi Smarak Dev Nagri Inter College, Parikshitgarh, District Meerut and he was confirmed on that post on 01.09.1986. On 03.06.1989 the government issued a government order directing, that those C.T. grade teacher who had completed five years shall be promoted on L.T. grade.***
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> ***In the counter affidavit filed on behalf of the District Inspector of Schools it is stated in para 6 that only those C.T. grade teachers who have completed five years***

will be promoted as L.T. grade teacher who are found to be suitable. In my opinion this is a wrong interpretation of the government order dated 03.06.1989. The C.T. grade is now a dying cadre and those who have completed 5 years in C.T. grade automatically become L.T. grade teachers and there is no question of considering their suitability. Since the petitioner was appointed as C.T. grade teacher on 01.12.1984 he completed five years on the post on 01.12.1989 he is entitled be promoted on L.T. grade respectively form 01.12.1989.

A mandamus is issued to the respondents to promote the petitioner in L.T. grade within one month of production of certified copy of this order before the authority. The petitioner shall get arrears of L.T. grade from 01.12.1989 till today within three months.

The writ petition is allowed. No order as to costs."

Learned counsel for the petitioner has also referred Rule 6 of Chapter II of the Regulations under Intermediate Education Act. The same provides that all the teachers working in L.T. or the C.T. grade, as the case may be, having a minimum of five years' continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject. As will appear from the Rule 6 that there is automatic promotion on the date of the vacancy after completion of five years of service provided the minimum qualifications as prescribed are fulfilled by the teacher concerned.

4) In view of the aforesaid facts and circumstances of the case, the writ petition deserves to be allowed. The respondents are directed to consider the grievances of the petitioner in

accordance with aforementioned judgment of the Allahabad High Court as well as Chapter II of Regulation 6 of the U.P. Intermediate Education Act. Respondent Nos. 2 and 3 are directed to consider absorption of the petitioner in L.T. grade from the date C.T. grade was declared a dying cadre or after completion of five years of continuous service by the petitioner in the C.T. grade, whichever is applicable to the petitioner, as per law.

Accordingly, the writ petition is allowed.

(Rajesh Tandon, J.)

Dt. 17th June, 2005
H. Negi